



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Nern, et al.) Group Art Unit : 1634
Appl. No. : 10/054,399)
Filed : January 21, 2002)
For : **NUCLEOTIDE SEQUENCES**)
 AND PROTEIN SEQUENCES)
Examiner : Fredman, Jeffrey Norman)

RESPONSE TO RESTRICTION / ELECTION OF SPECIES REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This is in response to the communication from the Examiner mailed May 2, 2003. In response to the restriction requirement set forth in the communication, Applicant elects to prosecute Group III, Claims 11-16, with traverse.

The Invention of Group III necessarily requires the nucleic acids of Group I. All of the claims of Group III and all of the claims of Group I recite specific SEQ ID NOS. As the Examiner has further set forth an Election of Species requirement discussed below, the scope of the search and examination of the claims of both Group I and Group III are limited by the elected SEQ ID NO(S). Consequently, a search and examination of Group III will necessarily require a search and examination of Group I. Applicants respectfully request that the Examiner reconsider and withdraw the Restriction Requirement with respect to Groups I and III and examine claims 1-4, 11-19, and 64-65.

Regarding the Election of Species Requirement, Applicants elect SEQ ID NO: 1, with traverse.

Appl. No. : **10/054,399**
Filed : **January 21, 2002**

As set forth in the specification, SEQ ID NOS: 1 & 23 are related as homologs (see present specification, page 4, lines 18-20). Consequently these species are not patentably distinct. Applicants request Examination of Groups I and III, claims 1-4, 11-19 and 64-65, as they pertain to both of SEQ ID NOS: 1 & 23.

Regarding the other species listed on page 6 of Paper No. 5, SEQ ID NOS: 10, 12, and 14 are related as set forth on page 13, lines 1-9 of the specification. Consequently, these species are not patentably distinct.

Furthermore, SEQ ID NOS: 2, 4, 6, 8, 18, 19, 20, 21, 22 are all related. SEQ ID NOS: 18, 19, and 20 are fragments of SEQ ID NO: 2 as set forth in page 8, paragraph 30 of the present specification. SEQ ID NOS: 21 and 22 are fragments of SEQ ID NO: 2 (see specification, paragraph 21 on page 7). SEQ ID NOS: 4, 6, and 8 are mutants of SEQ ID NO: 2 as described on page 7, paragraph 24 of the specification. Consequently, none of these species are patentably distinct over each other.

In summary, Applicants request Examination of Groups I and III, claims 1-4, 11-19 and 64-65, as they pertain to SEQ ID NOS: 1 & 23, in view of arguments presented above. Applicants also request modification of the Election of Species Requirement in view of the arguments presented above. Applicant reserves the right to pursue the remaining claims in a divisional application.

Appl. No. : 10/054,399
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No fees are believed to be due for the present Response, however, would any fees be due, please charge them to our Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 30, 2003

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